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4 UNITED STATES DISTRICT COURT
5 WESTERN DISTRICT OF WASHINGTON
6 AT TACOMA

7 RON HOLTZ,

8 v.

9 SUSAN KARR,

Plaintiff,

Defendants.

No. C12-5111 RJB/KLS

ORDER TO AMEND OR SHOW CAUSE

This matter has been referred to Magistrate Judge Karen L. Strombom pursuant to 28 U.S.C. § 636(b)(1), Local Rules MJR 3 and 4. Plaintiff has been granted leave to proceed *in forma pauperis*. Presently before the Court for review is Plaintiff's proposed "Civil Complaint for Declaratory Relief 28 U.S.C. § 2201". ECF No. 13. The Court will not direct service of Plaintiff's complaint at this time because it is deficient, as is explained in further detail below. Plaintiff will be given an opportunity to amend his complaint.

DISCUSSION

Under the Prison Litigation Reform Act of 1995, the Court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally "frivolous or malicious," that fail to state a claim upon which relief may be granted, or that seek monetary relief from a

1 defendant who is immune from such relief. 28 U.S.C. §§ 1915A(b)(1), (2) and 1915(e)(2); See
2 *Barren v. Harrington*, 152 F.3d 1193 (9th Cir. 1998).

3 A complaint is legally frivolous when it lacks an arguable basis in law or fact. *Neitzke v.*
4 *Williams*, 490 U.S. 319, 325 (1989); *Franklin v. Murphy*, 745 F.2d 1221, 1227-28 (9th Cir.
5 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an
6 indisputably meritless legal theory or where the factual contentions are clearly baseless. *Neitzke*,
7 490 U.S. at 327. A complaint or portion thereof, will be dismissed for failure to state a claim
8 upon which relief may be granted if it appears the “[f]actual allegations . . . [fail to] raise a right
9 to relief above the speculative level, on the assumption that all the allegations in the complaint
10 are true.” *See Bell Atlantic, Corp. v. Twombly*, 127 S.Ct. 1955, 1965 (2007) (citations omitted).
11 In other words, failure to present enough facts to state a claim for relief that is plausible on the
12 face of the complaint will subject that complaint to dismissal. *Id.* at 1974.

13 Although complaints are to be liberally construed in a plaintiff’s favor, conclusory
14 allegations of the law, unsupported conclusions, and unwarranted inferences need not be
15 accepted as true. *Jenkins v. McKeithen*, 395 U.S. 411, 421 (1969). Neither can the court supply
16 essential facts that an inmate has failed to plead. *Pena*, 976 F.2d at 471 (quoting *Ivey v. Board of*
17 *Regents of Univ. of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982)). Unless it is absolutely clear that
18 amendment would be futile, however, a pro se litigant must be given the opportunity to amend
19 his complaint to correct any deficiencies. *Noll v. Carlson*, 809 F.2d 1446, 1448 (9th Cir. 1987).

20 Plaintiff entitles his pleading “Civil Complaint for Declaratory Relief (28 U.S.C. 2201)”.
21 ECF No. 13. The Declaratory Judgment Act, 28 U.S.C. 2201, does not itself confer federal
22 subject matter jurisdiction on this Court. *Nationwide Mut. Ins. Co. v. Liberatore*, 408 F.3d 1158
23 (9th Cir. 2005). Therefore, this Court cannot consider Plaintiff’s claims as they are currently
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1 characterized. However, the Court is required to liberally construe pleadings to all for
2 jurisdiction if it is available and to allow for formal amendment of a complaint prior to dismissal.
3 In his complaint, Plaintiff alleges numerous policies and conditions to which various unnamed
4 “detainees” are allegedly subjected and a list of “rights” that he claims Defendant Karr “owes”
5 him. He then asks the Court to “declare” that Defendant Karr “owes” him those “rights”. ECF
6 No. 13. To state a cause of action under § 1983, Plaintiff must allege that (1) the named
7 Defendants deprived him of a right secured by the Constitution or laws of the United States and
8 (2) that, in doing so, the Defendants acted under color of state law. See *Flagg Bros., Inc. v.*
9 *Brooks*, 436 U.S. 149, 156-57, 98 S.Ct. 1729, 56 L.Ed.2d 185 (1978). Thus, Plaintiff must set
10 forth facts describing when, where and how Defendant Karr deprived him personally of a
11 constitutional right.

12 Due to the deficiencies described above, the Court will not serve the complaint. Plaintiff
13 may file an amended complaint curing, if possible, the above noted deficiencies, or show cause
14 explaining why this matter should not be dismissed no later than **June 22, 2012**. If Plaintiff
15 chooses to amend his complaint, he must demonstrate how the conditions complained of have
16 resulted in a deprivation of his constitutional rights. The complaint must allege in specific terms
17 how each named defendant is involved. The amended complaint must set forth all of Plaintiff’s
18 factual claims, causes of action, and claims for relief. Plaintiff shall set forth his factual
19 allegations **in separately numbered paragraphs** and shall allege with specificity the following:

20 (1) the names of the persons who caused or personally participated in causing the
21 alleged deprivation of his constitutional rights;

22 (2) the dates on which the conduct of each Defendant allegedly took place; and

23 (3) the specific conduct or action Plaintiff alleges is unconstitutional.

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1 An amended complaint operates as a complete substitute for (rather than a mere
2 supplement to) the present complaint. In other words, an amended complaint supersedes the
3 original in its entirety, making the original as if it never existed. Therefore, reference to a prior
4 pleading or another document is unacceptable – once Plaintiff files an amended complaint, the
5 original pleading or pleadings will no longer serve any function in this case. *See Loux v. Rhay*,
6 375 F.2d 55, 57 (9th Cir. 1967) (as a general rule, an amended complaint supersedes the prior
7 complaint). Therefore, in an amended complaint, as in an original complaint, each claim and the
8 involvement of each defendant must be sufficiently alleged.

9
10 Plaintiff shall present his complaint on the form provided by the Court. The amended
11 complaint must be **legibly rewritten or retyped in its entirety**, it should be an original and not a
12 copy, it may not incorporate any part of the original complaint by reference, and it must be
13 clearly labeled the “Amended Complaint” and must contain the same cause number as this case.
14 Plaintiff should complete all sections of the court’s form. Plaintiff may attach continuation
15 pages as needed but may not attach a separate document that purports to be his amended
16 complaint. **Plaintiff is advised that he should make a short and plain statement of claims
17 against the defendants. He may do so by listing his complaints in separately numbered
18 paragraphs. He should include facts explaining how each defendant was involved in the
19 denial of his rights.**

20
21 The Court will screen the amended complaint to determine whether it contains factual
22 allegations linking each defendant to the alleged violations of Plaintiff's rights. The Court will
23 not authorize service of the amended complaint on any Defendant who is not specifically linked
24 to the violation of Plaintiff's rights.
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If Plaintiff decides to file an amended civil rights complaint in this action, he is cautioned that if the amended complaint is not timely filed or if he fails to adequately address the issues raised herein on or before **June 22, 2012**, the Court will recommend dismissal of this action as frivolous pursuant to 28 U.S.C. § 1915 and the dismissal will count as a “strike” under 28 U.S.C. § 1915(g). Pursuant to 28 U.S.C. § 1915(g), enacted April 26, 1996, a prisoner who brings three or more civil actions or appeals which are dismissed on grounds they are legally frivolous, malicious, or fail to state a claim, will be precluded from bringing any other civil action or appeal in forma pauperis “unless the prisoner is under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g).

11 **The Clerk is directed to send Plaintiff the appropriate forms for filing a 42 U.S.C.**
12 **1983 civil rights complaint and for service. The Clerk is further directed to send a copy of**
13 **this Order and a copy of the General Order to Plaintiff.**

16 || DATED this 22nd day of May, 2012.


Karen L. Strombom
Karen L. Strombom
United States Magistrate Judge